

## 2009 DRAFTING REQUEST

### Bill

Received: **01/20/2009**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - alcohol and tobacco**

Extra Copies:

Submit via email: **NO**

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### Pre Topic:

DOA:.....Lillethun, BB0495 -

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### Topic:

Cigarette tax rate increase

---

### Instructions:

See attached

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkreye 01/20/2009	bkraft 01/20/2009	rschluet 01/20/2009	_____	cduerst 01/20/2009		State
/P2	jkreye 01/23/2009	bkraft 01/23/2009	rschluet 01/23/2009	_____	mbarman 01/23/2009		State
/P3	jkreye 01/27/2009	bkraft 01/27/2009	rschluet 01/27/2009	_____	mbarman 01/27/2009		State
	jkreye 01/27/2009	bkraft 01/27/2009		_____			
/P4			phenry 01/27/2009	_____	mbarman 01/28/2009		State

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/P5	jkreye 01/28/2009	bkraft 01/28/2009	jfrantze 01/28/2009	_____	sbasford 01/29/2009		State
	jkreye 01/30/2009	bkraft 01/28/2009		_____			
		jdye 01/30/2009		_____			
/P6			mduchek 01/30/2009	_____	cduerst 01/31/2009		State

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/P4			phenry 01/27/2009	_____	mbarman 01/28/2009		State

PC 1/30 jlw

MD 1/30 CS

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/P5 bjk 1/28

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ph  
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FE Sent For:

*/P3 bjk 1/27*

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/P2bjk'1/23

  
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Cigarette tax rate increase


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/P1	jkreye	/P1 bjk /20					

FE Sent For:

**<END>**

1654

## 2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Increase the Cigarette Tax Rate to \$2.50 per pack.
- Tracking Code: BB0495
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
  - Phone: 266-7597
  - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): High

### Intent:

Provide a \$0.73 per pack increase to the excise tax rate on cigarettes to total \$2.50 per pack.

139.31 (1)(a) x (2)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1654/P1

JK:.....

Lbjk

DOA:.....Lillethun, BB0495 - Cigarette tax rate increase

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SAV  
X-refv

do not gen. in 1-20-09

1 AN ACT ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill increases the cigarette tax rate from \$1.77 a pack to \$2.50 a pack.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 **SECTION 1.** 139.31 (1) (a) of the statutes is amended to read:

3 139.31 (1) (a) On cigarettes weighing not more than 3 pounds per thousand,

4 ~~88.5~~ 125 mills on each cigarette.

History: 1971 c. 125; 1981 c. 20, 317, 390; 1983 a. 2, 27; 1985 a. 29; 1987 a. 27; 1991 a. 269; 1995 a. 27; 1997 a. 27; 2001 a. 16; 2005 a. 22; 2007 a. 20.

5 **SECTION 2.** 139.31 (1) (b) of the statutes is amended to read:

6 139.31 (1) (b) On cigarettes weighing more than 3 pounds per thousand, ~~177~~

7 250 mills on each cigarette.

History: 1971 c. 125; 1981 c. 20, 317, 390; 1983 a. 2, 27; 1985 a. 29; 1987 a. 27; 1991 a. 269; 1995 a. 27; 1997 a. 27; 2001 a. 16; 2005 a. 22; 2007 a. 20.

**1 SECTION 9443. Effective dates; Revenue.**

**2 (1) CIGARETTE TAX RATE.** The treatment of section 139.31 (1) (a) and (b) of the  
**3 statutes takes effect on the first day of the 3rd month beginning after publication.**

**4 (END)**

**Kreye, Joseph**

---

**From:** Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]

**Sent:** Friday, January 23, 2009 11:45 AM

**To:** Kreye, Joseph

**Subject:** LRB Draft - Cigarette Tax Increase

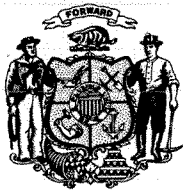
Joe - Sorry, to have to go back over this. I spoke with Kirsten Grinde this morning on the timing relative to the cigarette tax proposal. She'd like to go with the same language used in 2007-09 budget. If you're not using the below already can you substitute it for whatever effective date language that you have. Thanks.

-Chad

"Specify that the increases would take effect on September 1, 2009, or on the first day of the third month beginning after publication of the budget bill, whichever is later."

LRB 1654

01/23/2009



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1654/P1

JK:bjk:rs

stays DMR

DOA:.....Lillethun, BB0495 - Cigarette tax rate increase

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SAV

in 1-23-09

do not gen.

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill increases the cigarette tax rate from \$1.77 a pack to \$2.50 a pack.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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6 139.31 (1) (b) On cigarettes weighing more than 3 pounds per thousand, ~~177~~

7 250 mills on each cigarette.

**SECTION 9443. Effective dates; Revenue.**

(1) CIGARETTE TAX RATE. The treatment of section 139.31 (1) (a) and (b) of the statutes takes effect on the first day of the 3rd month beginning after publication.

(END)

*whichever is later**September 1, 2009, or on*



**Kreye, Joseph**

1654/

**From:** Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]

**Sent:** Tuesday, January 27, 2009 9:45 AM

**To:** Kreye, Joseph

**Subject:** RE: Cigarette and tobacco product products draft

Here you go. This how we want to expand the draft to include other tobacco products. Please include in the draft related to the cigarette tax increase. Thanks.

-Chad

The tax rates in this scenario would be:

- Other Tobacco Products Tax Rate increasing from 50% to 70% (with a maximum tax on cigars moving from \$0.50 per cigar to \$0.70 per cigar).
- Moist Snuff Tobacco Tax Rate increasing from \$1.31/oz to \$1.85/oz.

---

**From:** Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]

**Sent:** Tuesday, January 27, 2009 9:43 AM

**To:** Lillethun, Chad W - DOA

**Subject:** RE: Cigarette and tobacco product products draft

It may be too late, but we'll see.

**Joseph T. Kreye**

Senior Legislative Attorney

Legislative Reference Bureau

(608) 266-2263

---

**From:** Lillethun, Chad W - DOA [mailto:Chad.Lillethun@wisconsin.gov]

**Sent:** Tuesday, January 27, 2009 9:42 AM

**To:** Kreye, Joseph

**Subject:** RE: Cigarette and tobacco product products draft

You may want to hold off on that P4 until I shoot you the update that expands this to other tobacco products. I'll have it to you in about 5 minutes.

---

**From:** Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]

**Sent:** Tuesday, January 27, 2009 9:32 AM

**To:** Lillethun, Chad W - DOA

**Subject:** Cigarette and tobacco product products draft

Chad,

You will shortly receive a P4 version of LRB-1228. That version fixes a typographical error. Page 11, line 18 should read "The person is 18 years of age or older."

01/27/2009

Joe

**Joseph T. Kreye**  
Senior Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263

01/27/2009



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1654/P2

JK:bjk:rs

RMR stay

DOA:.....Lillethun, BB0495 - Cigarette tax rate increase

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA ✓  
X-ref ✓  
in 1-27-09  
do not gen.

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill increases the cigarette tax rate from \$1.77 a pack to \$2.50 a pack.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 139.31 (1) (a) of the statutes is amended to read:

3 139.31 (1) (a) On cigarettes weighing not more than 3 pounds per thousand,

4 88.5 125 mills on each cigarette.

5 SECTION 2. 139.31 (1) (b) of the statutes is amended to read:

6 139.31 (1) (b) On cigarettes weighing more than 3 pounds per thousand, 177

7 250 mills on each cigarette.

INSERT  
↑

7  
INSERT  
1-7

AND TOBACCO PRODUCTS

CS

**SECTION 9443. Effective dates; Revenue.**

(1) CIGARETTE TAX RATE. The treatment of section 139.31 (1) (a) and (b) of the statutes takes effect on September 1, 2009, or on the first day of the 3rd month beginning after publication, whichever is later.

(END)

139.76(1) and 139.78(1)

**2009-2010 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1654/P3ins  
JK:bjk:rs

**Insert A**

ms 97  
The bill also increases the tobacco products tax rate from 50 percent of the manufacturer's established list price to 70 percent of the manufacturer's established list price. Finally, the bill increases the tobacco products tax rate on moist snuff ~~from~~ <sup>e from</sup> \$1.31 per ounce to \$1.85 per ounce.

**Insert 1 - 7**

X  
**SECTION 1.** 139.76 (1) of the statutes is amended to read:

139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale or other disposition for any purpose of tobacco products by any person engaged as a distributor of them at the rate, for tobacco products, not including moist snuff, of ~~50~~ 70 percent of the manufacturer's established list price to distributors without diminution by volume or other discounts on domestic products and, for moist snuff, at the rate of ~~\$1.31~~ \$1.85 per ounce, and at a proportionate rate for any other quantity or fractional part thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax imposed under this subsection on cigars shall not exceed an amount equal to ~~50~~ 70 cents for each cigar. On products imported from another country, not including moist snuff, the rate of tax is ~~50~~ 70 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties and transportation costs to the United States. The tax attaches at the time the tobacco products are received by the distributor in this state. The tax shall be passed on to the ultimate consumer of the tobacco products. All tobacco products received in this state for sale or distribution within this state, except tobacco products actually sold as provided in sub. (2), shall be subject to such tax. The weight-based tax imposed under this subsection on moist snuff does apply to moist snuff that is the inventory of a distributor on January 1, 2008, and for which the tax levied under this subsection, 2005, stats., has been paid.

<sup>X</sup>  
1        **SECTION 2.** 139.78 (1) of the statutes is amended to read:

2        139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco  
3        products in this state at the rate, for tobacco products, not including moist snuff, of  
4        ~~50~~ 70 percent of the cost of the tobacco products and, for moist snuff, at the rate of  
5        ~~\$1.31~~ \$1.85 per ounce, and at a proportionate rate for any other quantity or fractional  
6        part thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax  
7        imposed under this subsection on cigars shall not exceed an amount equal to ~~50~~ 70  
8        cents for each cigar. The tax does not apply if the tax imposed by s. 139.76 (1) on the  
9        tobacco products has been paid or if the tobacco products are exempt from the tobacco  
10       products tax under s. 139.76 (2).

**History:** 1981 c. 20; 1985 a. 332; 1987 a. 312 s. 17; 1991 a. 39; 1997 a. 27; 2001 a. 16; 2007 a. 20.



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1654/P3

JK:bjk:rs

stage RM not R

DOA:.....Lillethun, BB0495 - Cigarette tax rate increase

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-27-09

SA ✓  
x-ref ✓

Insert

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

*In addition*  
This bill increases the cigarette tax rate from \$1.77 a pack to \$2.50 a pack. The bill also increases the tobacco products tax rate from 50 percent of the manufacturer's established list price to 70 percent of the manufacturer's established list price. Finally, the bill increases the tobacco products tax rate on moist snuff from \$1.31 per ounce to \$1.85 per ounce.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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3 139.31 (1) (a) On cigarettes weighing not more than 3 pounds per thousand,

4 88.5 125 mills on each cigarette.

**SECTION 2.** 139.31 (1) (b) of the statutes is amended to read:

139.31 (1) (b) On cigarettes weighing more than 3 pounds per thousand, ~~177~~  
250 mills on each cigarette.

**SECTION 3.** 139.76 (1) of the statutes is amended to read:

139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,  
possession with intent to sell or removal for consumption or sale or other disposition  
for any purpose of tobacco products by any person engaged as a distributor of them  
at the rate, for tobacco products, not including moist snuff, of ~~50~~ 70 percent of the  
manufacturer's established list price to distributors without diminution by volume  
or other discounts on domestic products and, for moist snuff, at the rate of ~~\$1.31~~ \$1.85  
per ounce, and at a proportionate rate for any other quantity or fractional part  
thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax  
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within this state, except tobacco products actually sold as provided in sub. (2), shall  
be subject to such tax. The weight-based tax imposed under this subsection on moist  
snuff does apply to moist snuff that is the inventory of a distributor on January 1,  
2008, and for which the tax levied under this subsection, 2005, stats., has been paid.

**SECTION 4.** 139.78 (1) of the statutes is amended to read:



139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco products in this state at the rate, for tobacco products, not including moist snuff, of ~~50~~ 70 percent of the cost of the tobacco products and, for moist snuff, at the rate of ~~\$1.31~~ \$1.85 per ounce, and at a proportionate rate for any other quantity or fractional part thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax imposed under this subsection on cigars shall not exceed an amount equal to ~~50~~ 70 cents for each cigar. The tax does not apply if the tax imposed by s. 139.76 (1) on the tobacco products has been paid or if the tobacco products are exempt from the tobacco products tax under s. 139.76 (2).

**SECTION 9443. Effective dates; Revenue.**

(1) CIGARETTE AND TOBACCO PRODUCTS TAX RATES. The treatments of section 139.31 (1) (a) and (b), 139.76 (1), and 139.78 (1) of the statutes takes effect on September 1, 2009, or on the first day of the 3rd month beginning after publication, whichever is later.

(END)

139.32(5)  $\nearrow$

Amend 2-3

X

Section #. 139.32 (5) of the statutes is amended to read:

139.32 (5) Manufacturers, bonded direct marketers, and distributors who are authorized by the  
→ department to purchase tax stamps shall receive a discount of ~~0.7~~ percent of the tax paid on stamp  
purchases. 0.5

History: 1971 c. 125; 1977 c. 29; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1989 a. 31; 1993 a. 16, 482; 1997 a. 27; 2005  
a. 25; 2007 a. 20.

end of 2-3

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## 2009-11 LRB Draft Review

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**Date:**

1-28-09

**LRB Number:**

LRB-1654/P4

**Reviewed by:**

Tom Ourada/Chuck Zwettler/Chris Roy/Deb Klimke

**Brief Description of LRB Draft:**

The draft increases the cigarette tax by \$0.73 per 20 pack (from \$1.77 per pack to \$2.50 per pack) a 41% increase and reduces the amount of the manufacturers and distributors discount from 0.7% to 0.5%. The tax increase would take effect on Sept. 1, 2009 or the first day of the third month after publication, whichever is later. The draft also increases the other tobacco products tax rate by a comparable amount, increasing the tax rate from 50% to 70% of the manufacturer's established list price, and increasing the tax rate on moist snuff tobacco from \$1.31 per ounce to \$1.85 per ounce. The draft also increases the maximum tax per cigar from \$0.50 per cigar to \$0.70 per cigar.

The discount rate on purchases of cigarette tax stamps has been reduced with recent increases in the cigarette tax. In 1997, the cigarette tax was increased from 44 cents per pack to 59 cents per pack, and the discount rate was reduced from 2.0% to 1.6%. Similarly, in 2008, the cigarette tax was increased from 77 cents per pack to \$1.77 per pack, and the discount rate was reduced from 1.6% to 0.7%. Such a reduction is appropriate because the higher tax rate does not result in increasing the administrative costs of paying the tax. This can be shown in a calculation of the per pack discount. The current per pack discount with a tax of \$1.77 per pack, results in a discount of 1.239 cents per pack. The draft reduces the manufacturers and distributors discount from 0.7% to 0.5% to maintain the discount comparable to current law. The per pack discount with a tax of \$2.50 per pack, and a 0.5% discount results in a discount of 1.25 cents per pack.

If a floor tax on moist snuff is desired, the following language must be added to the draft.

- The current law language under s.139.76 (1) applied a moist snuff inventory tax on the inventory of a distributor as of January 1, 2008. No language exists in the draft to refer to the inventory of moist snuff as of the time this additional tax increase would be effective. Any effort to apply this new tax increase retroactively to the inventory as of January 1, 2008 would be inequitable and potentially unenforceable.
- The current law language regarding the cigarette floor tax under s.139.315 (which allows for a cigarette floor tax to be imposed without appearing in the draft) applies only to cigarettes.

See the proposed changes and rationale below.

## Comments on Draft:

*Indicate whether draft will accomplish intent, or if not, why not*

## Changes Needed & Why:

*Include page and line references if appropriate. Example: page 2, line 4-5 – omit the phrase “with respect to a product under s.77.51 (3) (a)...” and replace with the phrase “all products used in a manner consistent with...”*

Prior to 2008, the tobacco products statute had no provision for an inventory tax on other tobacco products, so no guidance had been given regarding when the tax must be reported and paid to the department, and other administrative provisions, etc. The amount of revenue collected from the moist snuff inventory tax imposed at the time of the 2008 tobacco products tax increase was approximately \$580,000, and required significant time for tobacco product distributors to determine and department auditors to verify.

In addition, since the last floor tax on moist snuff was so recent and the floor tax is imposed on distributors and not retailers, we believe that distributors will sell most of their moist snuff to retailers and have little inventory of this product at the time of the tax increase, reducing the amount of revenue likely to be collected from the inventory tax.

A more efficient and equitable means of raising revenue would be the elimination of the artificial cap on the tax rate on cigars. In 2008, a cap was imposed at \$0.50 per cigar. Therefore the tax currently imposed on both a \$100.00 cigar and a \$2.00 cigar is \$0.50. If the cap was removed the tax would be \$50.00 and \$1.00 respectively. Such a change would raise more revenue than the imposition of a floor tax on moist snuff, and be considerably easier to implement for tobacco product distributors and regulators.

**If the moist snuff floor tax is intended** in the draft the department recommends the following changes to the draft based on the existing cigarette floor tax statutes.

Delete from page 2 line 25 and page 3 lines 1 – 2:

Section 4 139.76(1) The weight-based tax imposed under this subsection on moist snuff does apply to moist snuff that is the inventory of a distributor on January 1, 2008, and for which the tax levied under this subsection, 2005, stats., has been paid.

Create:

139.765 Moist Snuff inventory tax imposed; procedures.

**INVENTORY TAX IMPOSED.** On the effective date of any increase in the sum of the rate under s. 139.76 (1), an inventory tax is imposed upon moist snuff held in inventory for sale or resale on which the moist snuff tax has been paid at the prior rate and in the possession of distributors. Any person liable for this tax shall determine the ounces of moist snuff in the person's possession on the effective date of the increase, and by the 30th day after the effective date of the increase the person shall file a return and shall by that date pay the tax due.

**INVENTORY TAX COMPUTATION.** The moist snuff inventory tax under this section is computed by multiplying the ounces of moist snuff held in inventory for sale by the difference between the prior tax rate and the new tax rate.

**ADMINISTRATION.** Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c) and (2) to (7), 71.92, 73.01, 73.015 and 73.0301 apply to this section.

**LATE FILING FEE.** Any person who fails to file a moist snuff tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely if it is mailed in a properly addressed envelope with postage prepaid, if the envelope is postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

**INTEREST ON DELINQUENT PAYMENTS.** If any person does not timely pay the tax imposed under this section, that person is liable for interest at the rate of 1.5% per month or fraction of a month from the date the tax is due until the date when the tax is paid.

**PENALTY.** If any person who is liable for the tax under this section files a false or fraudulent return, that person is also liable, in addition to the tax due, for an amount equal to the amount of tax the person evaded or attempted to evade.

Page 2 Section 4 139.76(1) lines 16-18 the following sentence should be removed:  
The tax imposed under this subsection on cigars shall not exceed an amount equal to 50 70 cents for each cigar.

Page 3 Section 5 139.78(1) lines 8-10 the following sentence should be removed:  
The tax imposed under this subsection on cigars shall not exceed an amount equal to 50 70 cents for each cigar.



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1654/P4

JK:bjk:ph

stage RMR

DOA:.....Lillethun, BB0495 - Cigarette tax rate increase

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SAV  
x-ref ✓

in 2-28-09

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and imposes the increase on  
and imposes the increase on  
moist snuff in inventory  
moist snuff in inventory

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill increases the cigarette tax rate from \$1.77 a pack to \$2.50 a pack. The bill also increases the tobacco products tax rate from 50 percent of the manufacturer's established list price to 70 percent of the manufacturer's established list price. In addition, the bill increases the tobacco products tax rate on moist snuff from \$1.31 per ounce to \$1.85 per ounce.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 139.31 (1) (a) of the statutes is amended to read:

3 139.31 (1) (a) On cigarettes weighing not more than 3 pounds per thousand,

4 88.5 125 mills on each cigarette.

1       **SECTION 2.** 139.31 (1) (b) of the statutes is amended to read:

2       139.31 (1) (b) On cigarettes weighing more than 3 pounds per thousand, 177  
3       250 mills on each cigarette.

4       **SECTION 3.** 139.32 (5) of the statutes is amended to read:

5       139.32 (5) Manufacturers, bonded direct marketers, and distributors who are  
6       authorized by the department to purchase tax stamps shall receive a discount of 0.7  
7       0.5 percent of the tax paid on stamp purchases.

8       **SECTION 4.** 139.76 (1) of the statutes is amended to read:

9       139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,  
10      possession with intent to sell or removal for consumption or sale or other disposition  
11      for any purpose of tobacco products by any person engaged as a distributor of them  
12      at the rate, for tobacco products, not including moist snuff, of 50 70 percent of the  
13      manufacturer's established list price to distributors without diminution by volume  
14      or other discounts on domestic products and, for moist snuff, at the rate of \$1.31 \$1.85  
15      per ounce, and at a proportionate rate for any other quantity or fractional part  
16      thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax  
17      imposed under this subsection on cigars shall not exceed an amount equal to 50 70  
18      cents for each cigar. On products imported from another country, not including moist  
19      snuff, the rate of tax is 50 70 percent of the amount obtained by adding the  
20      manufacturer's list price to the federal tax, duties and transportation costs to the  
21      United States. The tax attaches at the time the tobacco products are received by the  
22      distributor in this state. The tax shall be passed on to the ultimate consumer of the  
23      tobacco products. All tobacco products received in this state for sale or distribution  
24      within this state, except tobacco products actually sold as provided in sub. (2), shall  
25      be subject to such tax. ~~The weight-based tax imposed under this subsection on moist~~

INSERT 3-2

~~snuff does apply to moist snuff that is the inventory of a distributor on January 1, 2008, and for which the tax levied under this subsection, 2005, stats., has been paid.~~

**SECTION 5.** 139.78 (1) of the statutes is amended to read:

139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco products in this state at the rate, for tobacco products, not including moist snuff, of 50 70 percent of the cost of the tobacco products and, for moist snuff, at the rate of \$1.31 \$1.85 per ounce, and at a proportionate rate for any other quantity or fractional part thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax imposed under this subsection on cigars shall not exceed an amount equal to 50 70 cents for each cigar. The tax does not apply if the tax imposed by s. 139.76 (1) on the tobacco products has been paid or if the tobacco products are exempt from the tobacco products tax under s. 139.76 (2).

**SECTION 9443. Effective dates; Revenue.**

(1) CIGARETTE AND TOBACCO PRODUCTS TAX RATES. The treatments of section 139.31 (1) (a) and (b), 139.32 (5), 139.76 (1), and 139.78 (1) of the statutes takes effect on September 1, 2009, or on the first day of the 3rd month beginning after publication, whichever is later.

(END)

139.765↑



**2009-2010 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1654/P5ins  
JK:bjk:ph

**Insert 3- 2**

X

1       **SECTION 1.** 139.765 of the statutes is created to read:

2       **139.765 Moist snuff inventory tax imposed.** (1) On the effective date of  
3 any increase in the sum of the rate under s. 139.76 (1), an inventory tax is imposed  
4 upon moist snuff held in inventory for sale or resale on which the moist snuff tax has  
5 been paid at the prior rate and in the possession of distributors. Any person liable  
6 for this tax shall determine the ounces of moist snuff in the person's possession on  
7 the effective date of the increase, and by the 30th day after the effective date of the  
8 increase the person shall file a return and shall by that date pay the tax due.

9       (2) The moist snuff inventory tax under this section is computed by multiplying  
10 the ounces of moist snuff held in inventory for sale by the difference between the prior  
11 tax rate and the new tax rate.

12       (3) Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12),  
13 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c)  
14 and (2) to (7), 71.92, 73.01, 73.015, and 73.0301, as they apply to income and franchise  
15 taxes, apply to the tax imposed under this section.

16       (4) Any person who fails to file a moist snuff tax return when due shall pay a  
17 late filing fee of \$10. A return that is mailed is timely if it is mailed in a properly  
18 addressed envelope with postage prepaid, if the envelope is postmarked, or marked  
19 or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal  
20 Revenue Code, on the due date and if the return is actually received by the  
21 department or at the destination that the department prescribes no later than 5 days  
22 after the due date. A return that is not mailed is timely if it is received on or before  
23 the due date by the department or at the destination that the department prescribes.

**Kreye, Joseph**

1654

---

**From:** Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]  
**Sent:** Friday, January 30, 2009 3:17 PM  
**To:** Kreye, Joseph  
**Cc:** Kraus, Jennifer - DOA; Hanaman, Cathlene; Grinde, Kirsten - DOA  
**Subject:** FW: Any additional stat language changes

Joe - Here are the tobacco changes we would like made in an amended draft for the cigarette and tobacco tax increase proposal.

- 1) Cigarettes: change from \$2.50 to \$2.52 per pack
- 2) Other tobacco products: change from 70% to 71%
- 3) Maximum cigar tax: change from 70 cents to 71 cents per cigar
- 4) Moist snuff: change from \$1.85 to \$1.87

Let me know if you have any questions. Thanks.

-Chad

---

**From:** Kraus, Jennifer - DOA  
**Sent:** Friday, January 30, 2009 9:43 AM  
**To:** DOA DL Budget TL; DOA DL Budget AN  
**Cc:** Hanaman, Cathlene - LEGIS  
**Subject:** Any additional stat language changes

Good morning -- First, the good news is that the bill compile went smoothly last night and I've been told that the sections in conflict are manageable. For those of you who haven't done this before, you will see a series of redrafts where they sort out these conflicts (usually by making small changes and/or deleting one draft and combining into a second draft, etc). They will raise any policy choices with you or me that need to be resolved.

From this point forward any changes needed will have to be made to the compile and should only be minor tweaks to current drafts. Please cc me and Cathlene Hanaman on any drafting changes that you are requesting.

Thanks much --- Jenny

PS - Thanks to whomever left the bugs in my office:)

01/30/2009



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1654/P5

JK:bjk:jf

RM and R

DOA:.....Lillethun, BB0495 - Cigarette tax rate increase

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-30-09

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1

AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill increases the cigarette tax rate from \$1.77 a pack to \$2.50 a pack. The bill also increases the tobacco products tax rate from 50 percent of the manufacturer's established list price to 70 percent of the manufacturer's established list price. In addition, the bill increases the tobacco products tax rate on moist snuff from \$1.31 per ounce to \$1.85 per ounce and imposes the increase on moist snuff in inventory.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2

**SECTION 1.** 139.31 (1) (a) of the statutes is amended to read:

3

139.31 (1) (a) On cigarettes weighing not more than 3 pounds per thousand,

4

88.5 125 mills on each cigarette.

(4)

126

252

1       **SECTION 2.** 139.31 (1) (b) of the statutes is amended to read:

2       139.31 (1) (b) On cigarettes weighing more than 3 pounds per thousand, 177

3       250 mills on each cigarette.

4       **SECTION 3.** 139.32 (5) of the statutes is amended to read:

5       139.32 (5) Manufacturers, bonded direct marketers, and distributors who are  
6       authorized by the department to purchase tax stamps shall receive a discount of 0.7  
7       0.5 percent of the tax paid on stamp purchases.

8       **SECTION 4.** 139.76 (1) of the statutes is amended to read:

9       139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,  
10      possession with intent to sell or removal for consumption or sale or other disposition

11     for any purpose of tobacco products by any person engaged as a distributor of them

12     at the rate, for tobacco products, not including moist snuff, of 50 ~~70~~ percent of the

13     manufacturer's established list price to distributors without diminution by volume

14     or other discounts on domestic products and, for moist snuff, at the rate of \$1.31 ~~\$1.85~~

15     per ounce, and at a proportionate rate for any other quantity or fractional part

16     thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax

17     imposed under this subsection on cigars shall not exceed an amount equal to 50 ~~70~~

18     cents for each cigar. On products imported from another country, not including moist

19     snuff, the rate of tax is 50 ~~70~~ percent of the amount obtained by adding the

20     manufacturer's list price to the federal tax, duties and transportation costs to the

21     United States. The tax attaches at the time the tobacco products are received by the

22     distributor in this state. The tax shall be passed on to the ultimate consumer of the

23     tobacco products. All tobacco products received in this state for sale or distribution

24     within this state, except tobacco products actually sold as provided in sub. (2), shall

25     be subject to such tax. The weight-based tax imposed under this subsection on moist

1 ~~snuff does apply to moist snuff that is the inventory of a distributor on January 1,~~  
2 ~~2008, and for which the tax levied under this subsection, 2005, stats., has been paid.~~

3 **SECTION 5.** 139.765 of the statutes is created to read:

4 **139.765 Moist snuff inventory tax imposed.** (1) On the effective date of  
5 any increase in the sum of the rate under s. 139.76 (1), an inventory tax is imposed  
6 upon moist snuff held in inventory for sale or resale on which the moist snuff tax has  
7 been paid at the prior rate and in the possession of distributors. Any person liable  
8 for this tax shall determine the ounces of moist snuff in the person's possession on  
9 the effective date of the increase, and by the 30th day after the effective date of the  
10 increase the person shall file a return and shall by that date pay the tax due.

11 (2) The moist snuff inventory tax under this section is computed by multiplying  
12 the ounces of moist snuff held in inventory for sale by the difference between the prior  
13 tax rate and the new tax rate.

14 (3) Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12),  
15 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c)  
16 and (2) to (7), 71.92, 73.01, 73.015, and 73.0301, as they apply to income and  
17 franchise taxes, apply to the tax imposed under this section.

18 (4) Any person who fails to file a moist snuff tax return when due shall pay a  
19 late filing fee of \$10. A return that is mailed is timely if it is mailed in a properly  
20 addressed envelope with postage prepaid, if the envelope is postmarked, or marked  
21 or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal  
22 Revenue Code, on the due date and if the return is actually received by the  
23 department or at the destination that the department prescribes no later than 5 days  
24 after the due date. A return that is not mailed is timely if it is received on or before  
25 the due date by the department or at the destination that the department prescribes.

1 For purposes of this subsection, "mailed" includes delivery by a delivery service  
2 designated under section 7502 (f) of the Internal Revenue Code.

3 (5) If any person does not timely pay the tax imposed under this section, that  
4 person is liable for interest at the rate of 1.5 percent per month or fraction of a month  
5 from the date the tax is due until the date when the tax is paid.

6 (6) If any person who is liable for the tax under this section files a false or  
7 fraudulent return, that person is also liable, in addition to the tax due, for an amount  
8 equal to the amount of tax the person evaded or attempted to evade.

9 ✓ SECTION 6. 139.78 (1) of the statutes is amended to read:

10 <sup>71</sup> 139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco  
11 products in this state at the rate, for tobacco products, not including moist snuff, of  
12 50 ~~70~~ percent of the cost of the tobacco products and, for moist snuff, at the rate of  
13 ~~\$1.31~~ <sup>\$1.87</sup> per ounce, and at a proportionate rate for any other quantity or fractional  
14 part thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax  
15 imposed under this subsection on cigars shall not exceed an amount equal to 50 ~~70~~ <sup>71</sup>  
16 cents for each cigar. The tax does not apply if the tax imposed by s. 139.76 (1) on the  
17 tobacco products has been paid or if the tobacco products are exempt from the tobacco  
18 products tax under s. 139.76 (2).

19 **SECTION 9443. Effective dates; Revenue.**

20 (1) CIGARETTE AND TOBACCO PRODUCTS TAX RATES. The treatments of section  
21 139.31 (1) (a) and (b), 139.32 (5), 139.76 (1), 139.765, and 139.78 (1) of the statutes  
22 takes effect on September 1, 2009, or on the first day of the 3rd month beginning after  
23 publication, whichever is later.

24 (END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1654/P6

JK:bjk:md

DOA:.....Lillethun, BB0495 - Cigarette tax rate increase

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill increases the cigarette tax rate from \$1.77 a pack to \$2.52 a pack. The bill also increases the tobacco products tax rate from 50 percent of the manufacturer's established list price to 71 percent of the manufacturer's established list price. In addition, the bill increases the tobacco products tax rate on moist snuff from \$1.31 per ounce to \$1.87 per ounce and imposes the increase on moist snuff in inventory.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 139.31 (1) (a) of the statutes is amended to read:

3 139.31 (1) (a) On cigarettes weighing not more than 3 pounds per thousand,

4 88.5 126 mills on each cigarette.

1           **SECTION 2.** 139.31 (1) (b) of the statutes is amended to read:

2           139.31 (1) (b) On cigarettes weighing more than 3 pounds per thousand, ~~177~~  
3           252 mills on each cigarette.

4           **SECTION 3.** 139.32 (5) of the statutes is amended to read:

5           139.32 (5) Manufacturers, bonded direct marketers, and distributors who are  
6           authorized by the department to purchase tax stamps shall receive a discount of ~~0.7~~  
7           0.5 percent of the tax paid on stamp purchases.

8           **SECTION 4.** 139.76 (1) of the statutes is amended to read:

9           139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,  
10          possession with intent to sell or removal for consumption or sale or other disposition  
11          for any purpose of tobacco products by any person engaged as a distributor of them  
12          at the rate, for tobacco products, not including moist snuff, of ~~50~~ 71 percent of the  
13          manufacturer's established list price to distributors without diminution by volume  
14          or other discounts on domestic products and, for moist snuff, at the rate of ~~\$1.31~~ \$1.87  
15          per ounce, and at a proportionate rate for any other quantity or fractional part  
16          thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax  
17          imposed under this subsection on cigars shall not exceed an amount equal to ~~50~~ 71  
18          cents for each cigar. On products imported from another country, not including moist  
19          snuff, the rate of tax is ~~50~~ 71 percent of the amount obtained by adding the  
20          manufacturer's list price to the federal tax, duties and transportation costs to the  
21          United States. The tax attaches at the time the tobacco products are received by the  
22          distributor in this state. The tax shall be passed on to the ultimate consumer of the  
23          tobacco products. All tobacco products received in this state for sale or distribution  
24          within this state, except tobacco products actually sold as provided in sub. (2), shall  
25          be subject to such tax. ~~The weight-based tax imposed under this subsection on moist~~



1 ~~snuff does apply to moist snuff that is the inventory of a distributor on January 1,~~  
2 ~~2008, and for which the tax levied under this subsection, 2005, stats., has been paid.~~

3 **SECTION 5.** 139.765 of the statutes is created to read:

4 **139.765 Moist snuff inventory tax imposed.** (1) On the effective date of  
5 any increase in the sum of the rate under s. 139.76 (1), an inventory tax is imposed  
6 upon moist snuff held in inventory for sale or resale on which the moist snuff tax has  
7 been paid at the prior rate and in the possession of distributors. Any person liable  
8 for this tax shall determine the ounces of moist snuff in the person's possession on  
9 the effective date of the increase, and by the 30th day after the effective date of the  
10 increase the person shall file a return and shall by that date pay the tax due.

11 (2) The moist snuff inventory tax under this section is computed by multiplying  
12 the ounces of moist snuff held in inventory for sale by the difference between the prior  
13 tax rate and the new tax rate.

14 (3) Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4) to (7), 71.80 (12),  
15 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91 (1) (a) and (c)  
16 and (2) to (7), 71.92, 73.01, 73.015, and 73.0301, as they apply to income and  
17 franchise taxes, apply to the tax imposed under this section.

18 (4) Any person who fails to file a moist snuff tax return when due shall pay a  
19 late filing fee of \$10. A return that is mailed is timely if it is mailed in a properly  
20 addressed envelope with postage prepaid, if the envelope is postmarked, or marked  
21 or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal  
22 Revenue Code, on the due date and if the return is actually received by the  
23 department or at the destination that the department prescribes no later than 5 days  
24 after the due date. A return that is not mailed is timely if it is received on or before  
25 the due date by the department or at the destination that the department prescribes.

1 For purposes of this subsection, "mailed" includes delivery by a delivery service  
2 designated under section 7502 (f) of the Internal Revenue Code.

3 (5) If any person does not timely pay the tax imposed under this section, that  
4 person is liable for interest at the rate of 1.5 percent per month or fraction of a month  
5 from the date the tax is due until the date when the tax is paid.

6 (6) If any person who is liable for the tax under this section files a false or  
7 fraudulent return, that person is also liable, in addition to the tax due, for an amount  
8 equal to the amount of tax the person evaded or attempted to evade.

9 **SECTION 6.** 139.78 (1) of the statutes is amended to read:

10 139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco  
11 products in this state at the rate, for tobacco products, not including moist snuff, of  
12 ~~50~~ 71 percent of the cost of the tobacco products and, for moist snuff, at the rate of  
13 ~~\$1.31~~ \$1.87 per ounce, and at a proportionate rate for any other quantity or fractional  
14 part thereof, of the moist snuff's net weight, as listed by the manufacturer. The tax  
15 imposed under this subsection on cigars shall not exceed an amount equal to ~~50~~ 71  
16 cents for each cigar. The tax does not apply if the tax imposed by s. 139.76 (1) on the  
17 tobacco products has been paid or if the tobacco products are exempt from the tobacco  
18 products tax under s. 139.76 (2).

19 **SECTION 9443. Effective dates; Revenue.**

20 (1) CIGARETTE AND TOBACCO PRODUCTS TAX RATES. The treatments of section  
21 139.31 (1) (a) and (b), 139.32 (5), 139.76 (1), 139.765, and 139.78 (1) of the statutes  
22 takes effect on September 1, 2009, or on the first day of the 3rd month beginning after  
23 publication, whichever is later.

24 (END)